

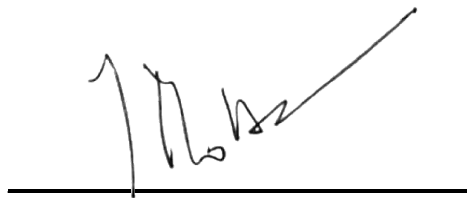
Concurring separate opinion of Judge Iulia Antoanella Motoc

1. I agree fully with my colleagues on the outcome of, and the reasoning provided in, the confirmation decision we issue unanimously today in the case against Mr El Hishri. I wish to provide further observations on the importance of intersectionality in the present case and for future cases which could be brought before the Court.
2. This case presents the Court with an important opportunity to examine intersectional discrimination. War crimes and crimes against humanity, particularly sexual and gender-based violence, frequently operate through intersectionality, as discrimination by reasons of actual or perceived race, nationality, political and religious views and opinions, and gender identity and sexual orientation overlap in a way that a uni-sectional analysis could not capture.
3. In Mitiga Prison, including in the Women's Section over which Mr El Hishri exercised control, gender discrimination was closely intertwined with political, religious, and racial discrimination. Women and girls were arrested and subjected to abuse because they exhibited conduct or had a physical appearance or displayed behaviour perceived by the Mitiga Perpetrators as 'inappropriate for their gender'. Where their gender expression did not conform with the perpetrators' ideological views and/or practices, they were punished or threatened for perceived non-compliance. Girls were particularly affected by the various discriminatory practices. In this respect, I note that P-1736 stated that Mr El Hishri refused to provide life-saving treatment to a detainee's newborn when he learned that the newborn was a girl.
4. The Mitiga Perpetrators simultaneously exploited the Mitiga Prison detainees because of their perceived irregular immigration status, combining discrimination based on nationality (from countries in East, West, Central, and Southern Africa) race and/or ethnicity (Black Africans not from Northern Africa), and the complete absence of legal protection in Libya. Some detainees were subjected to forced labour (slavery) and sexual violence because the combination of their identity characteristics placed them in one of the most vulnerable categories within the prison system.
5. The concept of intersectionality was coined by Kimberlé Crenshaw as a powerful tool capable of combating systemic oppression. Today, as a result of our decision to commit Mr El Hishri to trial, the combination of the various forms of discrimination at Mitiga Prison based on

race, ethnicity, gender (including gender expression and sexual orientation), political and religious views and opinions and nationality, makes its way into the courtroom.

6. The case file referring to multiple sub-groups of victims is not, in itself, sufficient. The Court must show, legally, how their targeting produced a specific and distinct form of suffering. Among other things, this case provides an opportunity for the Court to reconsider how evidence is gathered and presented and for the Chamber to acknowledge intersectional discrimination and the various forms of suffering of all victims.

Done in English. A French translation will follow. The English version remains authoritative.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long diagonal stroke extending upwards and to the right, positioned above a solid horizontal line.

Judge Iulia Antoanella Motoc, Presiding

Dated this Thursday, 16 July 2026

At The Hague, The Netherlands